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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,648	03/29/2004	Jose Ramirez II	1020P18387	3409
57035	7590	05/12/2008		
KACVINSKY LLC C/O INTELLEVATE P.O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER FOUD, HICHAM B	
			ART UNIT 2619	PAPER NUMBER
			MAIL DATE 05/12/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,648

Applicant(s)

RAMIREZ ET AL.

Examiner

HICHAM B. FOUAD

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on 04-24-2008 has been entered and considered.

Claims 7-10 and 12-15 are pending in this application.

Claims 1-6, 11 and 16-20 have been canceled.

Claims 7-10 and 12-15 are rejected as discussed below.

The finality of the rejection of the last Office action is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips (US 6,188,898) in view of Kuffner (US 2003/0235167).

Claim 9, Phillips discloses a method, comprising: receiving from the remote device a reply to a transmitted beacon, the reply indicating a desired radio communication protocol (see column 3 lines 20-25; the system may provide access to mobile terminals using the GSM 900, DECT and DCS 1800 protocols and the use of beacon function); determining whether the desired radio communication protocol is supported and in the event the desired radio communication protocol is supported, programming a physical layer block to communicate according to the desired radio communication protocol (see column 3 lines 56-64; when the protocol has been

identified, the corresponding software package is retrieved and downloaded. The details of the mobile terminal are then checked to ensure that the terminal is registered and the call is set up according to the desired protocol). Philips discloses all the subject matter with the exception of explicitly disclosing reprogramming of a physical layer block having a lower frequency of use according to the desired radio communication protocol in the case of there is no available physical layer block. However, Philips further discloses downloading the desired radio communication protocol and programming the radio to communicate according to the desired radio communication protocol (see column 56-64). Also, while downloading the desired protocol could overrides any physical layer blocks. It is not necessary for the system to have the reprogramming of a physical layer block having the lower frequency of use. It is generally considered to within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The Burden of showing the criticality is on applicant. In re Mason, 87 F.2d 370, USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. V. U.S., 320 US 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since the reprogramming of a physical layer block having the lower frequency of use is not critical to the system, it would have been obvious to vary and select any physical layer block to reprogram with the desired protocol to communicate with users, including the physical layer block having the lower

physical block. Also, Kuffner from the same or similar field of endeavor teaches the reassignment and the reconfiguration of the physical layer blocks wherein a physical layer block that uses low frequency is reconfigured (see page 3 [0028] lines 39-42 and Fig. 5 wherein first transceiver in Fig.5 that uses 800 MHz (lower frequency) may be redeployed as GPS (In Fig.4) that uses 1575 MHz). Thus, it would have been obvious to the one skill in the art at the time of the invention to use the method of Kuffner into the invention of Philips for the purpose of reconfiguration of physical layer blocks to accommodate any desired protocol.

Claim 14 is rejected for same reasons as claim 9.

For claims 7 and 12, Phillips further discloses a method, further comprising, if the desired communication protocol is not supported, determining whether a download of the desired radio communication protocol is available, and if available, downloading the desired radio communication protocol and programming the radio to communicate according to the desired radio communication protocol (see column 56-64; when the protocol has been identified, the corresponding software package is retrieved and downloaded. The details of the mobile terminal are then checked to ensure that the terminal is registered and the call is set up according to the desired protocol).

For claims 8 and 13, Phillips further discloses a method wherein if a physical layer block is not currently, then programming at least one physical layer block to operate according to the desired radio communication protocol and then communicating with the remote device according to the desired radio communication protocol (see column 3 lines 56-64; when the protocol has been identified, the corresponding software

package is retrieved and downloaded. The details of the mobile terminal are then checked to ensure that the terminal is registered and the call is set up according to the desired protocol). Phillips discloses all the subject matter with the exception of determining whether a physical layer block is currently programmed to operate according to the desired radio communication protocol, and if so, communicating with the remote device according to the desired radio protocol. However, Kuffner discloses a method wherein a physical layer block is currently programmed to operate according to the desired radio communication protocol, and communicating with the remote device according to the desired radio protocol (see Figures 1, 4 and paragraph 0014; 102 might be by default be an 800 MHz and 104 might by default be a 1575 MHZ). Also, Kuffner suggested that these physical layer blocks (102 and 104) could be subsequently reassigned as well. Thus, it would have been obvious to the one skill in the art at the time of the invention to use the teachings of Kuffner into the invention of Phillips for the purpose of reconfiguration of physical layer blocks to accommodate any desired protocol.

4. Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Kuffner and further in view of Allison et al (US 6,167,032).

For claims 10 and 15, Phillips in view of Kuffner discloses a method further comprising programming two or more physical layer blocks to communicate according to two or more radio communication protocols (see Figure 2 and column 3 lines 23-27; the system may provide access to mobile terminals using the GSM 900, DECT and DCS 1800). Phillips in view of Kuffner discloses all the subject matter with the

exception of coupling the physical layer blocks to a network through a hub. However, Allison discloses the coupling of physical layer blocks to a network through the hub (see Figure 1; element 16 "Ethernet MAC chip, element 12 "Ethernet physical layer" and a hub: element 34 "Ethernet interface"). Thus, it would have been obvious to the one skill in the art at the time of the invention to use the teachings of Allison et al into the invention of Phillips in view of Kuffner for the purpose of connecting to another network through the hub such as an Ethernet network using MAC and therefore increasing the adaptability of the system.

Response to Argument

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

7. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is

respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

When responding to this office action, applicants are advised to clearly point out the patentable novelty which they think the claims present in view of the state of the art disclosed by the references cited or the objections made. Applicants must also show how the amendments avoid such references or objections. See 37C.F.R 1.111(c). In addition, applicants are advised to provide the examiner with the line numbers and pages numbers in the application and/or references cited to assist examiner in locating the appropriate paragraphs.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hicham B. Foud whose telephone number is 571-270-1463. The examiner can normally be reached on Monday - Friday 10-18 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Art Unit: 2619

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hicham B Foud/

Examiner, Art Unit 2619

05/09/2008

/CHAU T. NGUYEN/

Supervisory Patent Examiner, Art Unit 2619